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LELAND STANFORD JUNIOR UNIVERSITY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES LEE STEWART, an individual,	)	CASE NO. C07 04061 RS
	)	
Plaintiff,	)	<b>REPLY TO LACK OF OPPOSITION TO</b>
	)	<b>STANFORD'S MOTION TO DISMISS</b>
vs.	)	<b>FOR FAILURE TO STATE A CLAIM</b>
	)	<b>UPON WHICH RELIEF CAN BE</b>
LELAND STANFORD JUNIOR	)	<b>GRANTED</b>
UNIVERSITY,	)	
	)	Date: September 15, 2008
Stanford.	)	Time: 9:00 a.m.
	)	Courtroom: 8, 4 <sup>th</sup> Floor
	)	Judge: Hon. James Wave

**I. INTRODUCTION**

Stanford Leland Stanford Junior University ("Stanford") hereby respectfully submits this Reply to the Lack of Opposition to Stanford's Motion to Dismiss for Failure to State a Claim Upon Which Relief can be granted. Plaintiff James Stewart ("Stewart") has not timely served or filed any opposition to the legal challenges raised by Stanford's Dismissal Motion. Stewart has waived his right to further oppose Stanford's motion.

Stanford brought this Motion to Dismiss Stewart's Complaint for Declaratory Relief, ("Dismissal Motion") which seeks to proceed under the Collective Bargaining Agreement's ("CBA") grievance and arbitration process, because a prerequisite to bringing such a claim (by which Stewart seeks recovery for employment termination), a worker must have exhausted his contractual remedies of the grievance and arbitration procedures or otherwise have shown a

breach of duty of fair representation against his Union. Because Stewart has done neither, his Declaratory Relief action must be dismissed without leave to amend.

## II. LEGAL ARGUMENT

### **Stewart's Failure to Serve Any Opposition Waives His Right to Oppose Stanford's Dismissal Motion.**

As of the date of this Reply, Stewart has not served or filed any Opposition in response to Stanford's Motion to Dismiss. Declaration of Carol C. Copsey in Support of Stanford's Reply on Motion to Dismiss for Failure to State a Claim Upon which Relief can be Granted ("Copsey Decl.") ¶ 2.

The hearing in this matter is set for September 15, 2008. The hearing date was set on Defense counsel's notice to Stewart's counsel. (Copsey Decl., 3, Exhibit A) Indeed, upon such notice by both e-mail and voicemail, Stewart's counsel selected the date set for hearing, September 15, 2008, a date which was later than the first available date for the Court, because earlier dates were inconvenient for his schedule (Copsey Decl., ¶ 3).

Stanford's motion was filed May 16, 2008, and Stewart has had over three months' time within which to prepare his Opposition. Stewart has had such ample time within which to timely file and serve Opposition to Stanford's Dismissal Motion. Stanford also met and conferred with Stewart even prior to filing of Stanford's Dismissal Motion, so Stewart had even greater time to consider, research and draft Opposition. (Copsey Decl., ¶ 4).

Local Rules for the U.S. District Court Northern District of California, Local Rule 7-3 requires:

"Opposition. Any opposition to a motion must be served and filed not less than 21 days before the hearing date. The opposition may include a proposed order, affidavits or declarations, as well as a brief or memorandum under Civil L.R. 7-4. Pursuant to Civil L.R. 7-4(b), such briefs or memoranda may not exceed 25 pages in length."

Pursuant to Local Rule 7-3, Stewart's Opposition was due by August 25, 2008. If Stewart files an untimely Opposition between the date of the filing of this Reply and the hearing, Stanford submits that his Opposition should not be considered. As Local Rule 1-4 states: "Failure by counsel or a party to comply with any duly promulgated local rule or any Federal

1 sanction.”

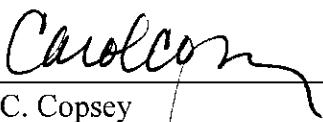
2       Stewart has waived its right to offer any opposition, either in writing or orally at the time  
3 of the hearing on September 15. Stanford would be unfairly prejudiced by the late submission of  
4 opposing papers because the time for filing any opposition has passed, and the last time for  
5 Stanford to Reply thereto is today’s date, August 29, 2008. Stanford would be similarly  
6 prejudiced by any last-minute arguments orally posed by Stewart at the time of the hearing on  
7 this Motion to Strike. Accordingly, Stanford requests that this Court exercise its discretion and  
8 disregard any opposing papers or arguments hereafter submitted by Stewart.

9 **III. CONCLUSION**

10       For all the reasons set forth in Stanford’s moving papers, and for the additional reason  
11 that Stewart has failed to supply any Opposition to the legal challenges raised by Stanford’s  
12 Dismissal Motion, Stanford requests that this Court grant the Dismissal Motion, and Stewart’s  
13 Complaint for Declaratory Relief be dismissed without leave to amend.

14  
15 Dated: August 29, 2008

GORDON & REES LLP

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17 By:   
18 Carol C. Copsey  
19 Attorneys for Stanford  
20 LELAND STANFORD JUNIOR UNIVERSITY  
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